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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,317	08/31/2001	Nikos Paragios	2000P07873US01	2148

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Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

LAVIN, CHRISTOPHER L

ART UNIT	PAPER NUMBER
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2621

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/944,317	Applicant(s) PARAGIOS ET AL.	
	Examiner Christopher L. Lavin	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. This action is responsive to the amendment filed on 07/05/05

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujioka (4,908,704).

In regards to claim 1, A method of video analysis comprising the steps of: estimating a background reference frame for representing a background (col. 3, lines 37 – 40); estimating geometric parameters for representing a scale variation of objects in a given frame, the geometric parameters comprising a weighting for each pixel in the given frame (col. 3, line 40 – col. 4, line 16: "Each block can be defined for one pixel".); obtaining a change detection map for distinguishing the background from the objects in the given frame (col. 4, lines 17 – 32); and combining the change detection map with the geometric parameters to determine a measure of congestion of the given frame (col. 4, lines 33 – 64: It should be noted that everything after the word "parameters" is given no weight as it is intended use. A method claim must be defined by positively recited

steps, the to determine phrase is not a step and therefore is intended use which is not given weight.).

In regards to claim 3, The method of claim 1, wherein said scale variation comprises variation in the object's width and height as a function of said object's position in the given frame (col. 4, line 65 – col. 5, line 18: The distance map is used to assign perspective information to the pixels, i.e., scale variation.).

In regards to claims 8 and 10, claims 8 and 10 are rejected for the same reasons as claims 1 and 3. The argument analogous to that presented above for claims 1 and 3 is applicable to claims 8 and 10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 4, 7, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka in view of Karmann (5,034,986).

In regards to claims 4 and 11, Fujioka discloses a static background image. However it is well known in the art as shown by Karmann (col. 5, lines 22 – 51; col. 6, lines 56 – 60: The background reference frame is modified based on the background image which is calculated from the object mask, i.e., the change detection map.) that a dynamic background map can be used which is updated using the change detection map.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to use a dynamic background map (as taught by Karmann) in the method disclosed by Fujioka. As Karmann teaches (col. 3, lines 57 – 58) a dynamic background map allows for gradual brightness and contrast changes. This would allow Fujioka to be used in more situations, such as outdoors thus increasing its utility. As this is dealing with contrast and brightness changes, these changes would not affect the distance map of Fujioka.

In regards to claims 7 and 14, The method of claim 4, wherein static pixels of the background reference frame are updated (Karmann: col. 5, lines 22 – 51: Every pixel of the background is updated, which includes the static pixels).

8. Claims 2, 6, 9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka in view of Ostendorf et al (“HMM topology design using maximum likelihood successive state splitting,” Computer Speech & Language, vol. 11, no 1, pp. 17 – 41, 1997) and Karmann.

In regards to claims 2 and 9, Fujioka discloses a static background image. However it is well known in the art as shown by Karmann (col. 5, lines 22 – 51; col. 6, lines 56 – 60: The background reference frame is modified based on the background image which is calculated from the object mask, i.e., the change detection map.) that a dynamic background map can be used which is updated using the change detection map.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to use a dynamic background map (as taught by Karmann) in the method disclosed by Fujioka. As Karmann teaches (col. 3, lines 57 – 58) a dynamic background map allows for gradual brightness and contrast changes. This would allow Fujioka to be used in more situations, such as outdoors thus increasing its utility. As this is dealing with contrast and brightness changes, these changes would not affect the distance map of Fujioka.

With the addition of a dynamic background map Fujioka (as modified by Karmann) has everything in common with claim 2 except for using Hidden Markov Model with successive state splitting, which is what is claimed in claim 2.

Ostendorf in the first full paragraph on page 19 discloses the use of a Hidden Markov Model (HMM) with Successive State Splitting (SSS) which starts with a single node or state uses likelihood to determine confidence limits and where appropriate split the node into two, creating a new state.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to use HMM with SSS as taught by Ostendorf to estimate the background frame of Fujioka (as modified by Karmann). Markov models are among the best understood and best performing statistical tools for time-series inference, HMM are ideal for dealing with continuous data. As Fujioka is now capable of tracking objects in outdoor environments which comprise of several background situations that should be taken into account: night, day, cloudy, sunny, etc.; using HMM with SSS to create a background reference frame would be highly advantageous as this would result in more accurate background reference frames and thus more accurate tracking results.

In regards to claims 6 and 13, The method of claim 2, wherein each of said multiple nodes is assigned to a new state (Ostendorf: First full paragraph on page 19: A new state is created for each split off node.).

9. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka in view of Abbott (5,999,634) and Higashikubo (5,999,635).

It is first noted that claims 5 and 12 are further modifying the intended use phrase from the independent claims. Thus claims 5 and 12 are intended use and can be rejected for the same reasons as claim 1. However, a further rejection will be provided to show that even if claim 1 was correct to rewrite the intended use phrase as a positively recited step it could still be rejected.

In regards to claims 5 and 12, Fujioka does not disclose using the invention for congestion measurements, although it clearly could be used as such. Fujioka does not disclose how such a measurement could be taken or what kind of environment a congestion measurement would be taken in.

First, Abbott discloses in the tracking environment that congestion of a railway platform can be measured.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to use the method disclosed by Fujioka to measure congestion on a railway platform as taught by Abbott. Both methods use a similar technique of detecting a change to track objects. Therefore including congestion measurements in Fujioka would require very little modification and add new functionality which would increase the value of the invention.

Fujioka (as modified by Abbott) does not disclose measuring congestion in the fashion described in the claims.

Higashikubo discloses in the paragraph starting at column 3, line 37 taking the ratio of the congestion area to the overall area to determine the percent of congestion at a given time. Higashikubo is a method for tracking movement.

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to include a congestion measurement (as taught by Higashikubo) to the tracking method disclosed by Fujioka (as modified by Abbot). Calculating the congestion of an image could allow Fujioka to better determine how many objects are being tracked and better anticipate objects occluding each other.

Response to Arguments

10. Applicant's arguments, filed 07/05/05, with respect to claims 1 – 14 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

11. In response to applicant's argument that "to determine a measure of congestion of the given frame" should be given weight, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

12. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher L. Lavin whose telephone number is 571-272-7392. The examiner can normally be reached on M - F (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancuso Joseph can be reached on (571) 272-7695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher Lavin

A handwritten signature in black ink, appearing to read "BRIAN WERNER", with a long horizontal line extending to the right.

**BRIAN WERNER
PRIMARY EXAMINER**